Cable Communications Agency
CITY OF INDIANAPOLIS
WCTY Government Channel 16

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C.
20554

In the Matter of

Implementation of Cable Act Reform Provisions
of the Telecommunications Act of 1996
CS Docket # 96-85/FCC 96-154

May 30, 1996

To Whom it May Concern,

Thank you for the opportunity to send comments for due consideration regarding the implementation of Cable Act Reform Provisions of the 96 Act.

The City of Indianapolis will submit its comments in the order in which the NPRM solicits public comment in CS96-85.

In addressing the definition of "comparable programming", (**item 12/page 7**) may we suggest the inclusion of PEG Access so that there is a more apples to apples comparison as to what the incumbent provides to that of new competitor. This comparison equivalence is an essential element for creating the oft talked about *Level Playing Field.* As PEG Access is an integral part of meeting community needs and is a consistent response to surveys that show growing popularity for local programming, one reasons that all program providers should carry PEG Access.

Pertaining to technical standards, (**Item F/pg. 17**) local operators maintain that even for PEG Access signal requirements, the City is not allowed to ensure provisions of quality thresholds for the signals of PEG which are within their control. The City of Indianapolis wishes to seek clarification in this area.

200 East Washington Street, City-County Building, Room G-19, Indianapolis, Indiana 46204
Office: (317) 327 - 4529 Fax: (317) 327 - 3399

Additionally, if the subscribers are unwittingly subsidizing the technical infrastructure through a Social Contract situation in which they and the City of Indianapolis had no say so in, then it is reasonable to expect the City to ensure the paying public that it is receiving a quality system that won't be antiquated and rebuilt later at subscriber expense again.

Item H/page 21 of the NPRM makes reference to **Section 628 of the Act** governing access to programming. While the stated intention of Congress was to promote programming diversity and eliminate unfair competitive practices, the concern by many cable operators expressed at the NCTA regarded the proper compensation that the Operator would receive for leasing a channel. Under the law, the Cable Operators, upon increased channel capacity are required to lease a certain percentage of the their cable spectrum. The City of Indianapolis would concur with the operator's concerns over fair and reasonable compensation and would encourage the FCC to arrive at a proper formula to alleviate these concerns. Furthermore, we are concerned that this new provision for leased access will force cable systems to rent a good portion of their spectrum for carriers of 24 hour infomercial programming. We have a enough of that now and that is not what subscribers want to pay for.

Item 69/Page 26 references effective competition. Specifically addressing the FCC's solicitation for comments in item **72/page 27** we note that Congress in the writing of the 96 Telecommunications Act applied no percentage to the penetration for effective competition. It had been suggested at sessions to the 96 NCTA Convention that the FCC could view a few subscribers as competition to the incumbent operator. thus qualifying the incumbent to deregulation of BST and CPST.

The 96 Act adds a fourth way that a cable operator can be subject to effective competition, and thus escape rate regulation. **Section 301(b)(3) of the 96 Act** finds effective competition to exist if a LEC or its affiliate offers video programming services directly to subscribers in a franchise area provided that the LEC's programming services are comparable to services offered by an existing cable operator in the franchise area. This test raises issues that could significantly weaken regulation and result in increased rates to subscribers including:

*Whether an operator is subject to effective competition if a LEC offers cable programming to even a *single individual* (or apartment building) in the franchise area.

*Whether an operator is subject to effective competition from MMDS or SMATV system in the area that carries no local broadcasting.

*Whether a cable system owning as much as 10% of a LEC offering cable programming in a franchise area can, effectively, compete against itself.

The City of Indianapolis would respectfully submit that the FCC find a reasonable formula or penetration percentage that would ensure *effective* competition. To assume that Congress intended effective competition be based upon even the lowest percentage of penetration by a competitor to the incumbent is unreasonable. It had been suggested at the time of passage of the 96 Act that there may be some holes to fill that may come along with regard to the Act and that Congress may have to meet again to address them. Absent that, common sense should be the overriding factor in determining effective competition

Regarding Item 79/page 29, the City would submit that 90 days is reasonable in which to file a rate complaint on behalf of the subscribers who have filed them already with the LFA.

Item 104/Page 38 makes further reference to technical standards and their implication on the scope of the cable franchising process. The FCC appears to be considering an expansive interpretation of this provision (**Section 301(e) of 96 Act**), that could impact the rights of franchising authorities to establish system upgrade requirements, such as two way capability or channel capacity, in franchise negotiations. Such an interpretation would significantly undercut positions of franchising authorities in renewal proceedings and with regard to technical standards in current franchises.

Once again, local cable operators have maintained that the City has no business in dictating to them technical standards of system design, I-NET provisions or PEG access commitments, citing the 96 Act. We seek clarification on this issue as PEG Access and I-NET provisions are permissible under the 84 and 96 Telecommunication Acts. Furthermore, the City should represent a public that is mandated via a social contract to pay for the operator's rebuild. As the City may understand better than the paying consumer as to what a quality, virtual outage free system should look like, then the City should be able to negotiate the technical make up of the system as it is representing the public which is required to pay for it.

Finally, on this issue of technical standards, the FCC Commissioners should ask themselves this poignant question: Is not a good portion of this deregulation from the Cable Act aimed at the deployment of new technologies to better the subscriber? If so, should the FCC not empower LFAs to encourage those that they franchise to do so? The bottom line is this: attend NCTA. Listen to all of the wonders and timetables that the industry purports for the deployment

of new technology. When you get back home and its time to negotiate a franchise agreement, try and get the operator to agree in writing to what their corporate executives have been boasting and promising only weeks earlier. LFAs therefore should not be restricted in their ability to negotiate and franchise technical standards for operators. It is in actuality, the LFAs who are the impetus for the deployment of new technology, subscriber happiness and competition.

Item 109/Page 40 references Advanced Telecommunications Incentives. The City would respectfully submit that in keeping with Congress' goal for the deployment with such technology under the auspices stated in **H109** that shadowing the subscriber system with an Institutional Network (I-NET) and Internet access will go a long way to achieve Congress' goal of providing On & Off ramps for schools to access the Information Superhighway.

Respectfully submitted,

Rick Maultra
Telecommunications Coordinator
City of Indianapolis

cc: Cable Bureau/FCC Information Office
FCC Commissioners
Carlton Curry-Cable Franchise Board President
Peggy Piety-Corporation Counsel